

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOHN ANDREW GOODRIDGE
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

HARRY G. CAMPBELL,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)

No. 82A01-0603-CR-107

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David D. Kiely, Judge
Cause No. 82C01-0507-FC-749

October 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Harry Campbell appeals his conviction for carrying a handgun without a license, a Class C felony. We affirm.

Issue

The sole issue is whether the trial court erred in denying Campbell's motion to continue his trial.

Facts

The facts most favorable to the conviction reveal that on July 1, 2005, Campbell was arrested at his girlfriend's Evansville residence for carrying a handgun without a license, a Class A misdemeanor. On July 7, 2005, the State filed charges and also sought to enhance the charge to a Class C felony.

On July 22, 2005, an initial hearing was held, and Jeffery Lantz entered his appearance as legal counsel for Campbell. On September 23, 2005, Lantz orally withdrew his appearance, and Emil Becker entered his appearance. Becker requested a jury trial for November 23, 2005. Becker failed to appear for Campbell's pretrial conference on November 11, 2005, and, as a result, the trial was rescheduled for January 9, 2006. On January 5, 2006, the pre-trial conference was held, and the State offered Campbell a plea agreement, which Campbell had until January 6, 2006 to accept or decline.

On Friday, January 6, 2006, Campbell orally requested a continuance in order to hire a new attorney. In denying Campbell's request, the following transpired:

[DEFENSE COUNSEL:] Your honor, we had added Mr. Campbell on at one o'clock because I had talked to the Prosecutor and of the three cases they were going to dismiss two of them and have him . . . offer him a deal where they would plead guilty to the cocaine case. I've discussed it with my client and he chooses not to plead guilty on the B, uh so we go to trial Monday morning at eight o'clock on the D. Have you had any luck getting clothing?

[DEFENDANT:] Naw, I would like to say something. I would like to hire . . . I don't feel like he is working for me. He just told me . . .

[DEFENSE COUNSEL:] Who am I working for, the Judge?

[DEFENDANT:] He just [told] me to rot in here and to go to hell. I would like my bond receipts back and I would like to hire another attorney.

[COURT:] Okay, well I'll see you Monday morning [January 9], eight o'clock. We're going to trial.

[DEFENDANT:] I don't want to go to trial with him.

[COURT:] You should have hired someone before three days before trial. We're going to trial Monday and you waited until the last minute and I've bumped other trials because your case was up next and you were in custody.

[DEFENDANT:] But, your honor, you know what I'm saying? I'm in here for a Class C. . . I'm mean a Class D Intimidation. And now yet if I wouldn't have been . . . turned myself in on this intimidation I'd never be in front of you right now.

[COURT:] No, you are in here on a Class C Felony in 749.

[DEFENDANT:] I'm out on bail for that.

[COURT:] You are in here on Intimidation as a D in cause 774, and you're in here two B Felonies Dealings in 729.

[DEFENDANT:] I understand that, but see I'm out on bond for those Bs. I turned myself in on the Intimidation knowing that I would beat that charge. And then I'm being taken to Court . . . taken to trial on the gun charge. I already admitted guilt to the gun.

[COURT:] I suggest that you talk to your lawyer before you go . . .

[DEFENDANT:] I mean I'm in trial to . . . I mean I'm not getting anywhere.

[COURT:] . . . you go running your mouth about it because now what you just said? That is going to go in front of that jury Monday and they are going to use it against you. You're looking at two to eight on that. They offered you ten on a B and C and . . .

[DEFENDANT:] Right now you are telling me I can't hire another attorney?

[COURT:] Right, we're going to . . . I mean when were you going to . . .

[DEFENDANT:] But you are taking a gun charge and you ain't even focusing in on what I'm in for.

[COURT:] When were you going to get an attorney and how is he . . .

[DEFENDANT:] I mean, I turned myself in on . . .

[COURT:] Are you going to listen to me or are you going to go back to your cell?

[DEFENDANT:] Yeah, you know I'm just trying to understand . . . I'm confused. I don't know what is going on. I haven't talked to my lawyer until today. I don't know what's going on.

Appellant's App. pp. 74-77.

Before trial on January 9, 2006, Campbell again asked for a continuance to hire a new attorney and was denied. At trial, Campbell's pretrial conference confession of guilt was admitted in evidence and a jury convicted Campbell of carrying a handgun without a license. He now appeals.

Analysis

Campbell contends the trial court erred by denying his motion to continue the trial. Rulings on non-statutory motions for continuance lie within the discretion of the trial court and will be reversed only for an abuse of that discretion and resultant prejudice. Jackson v. State, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001). An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. Id. Continuances for additional time to prepare for trial are generally disfavored, and courts should grant such motions only where good cause is shown and such a continuance is in the interest of justice. Id.

Here, Campbell requested a continuance of the trial over three months after Becker entered his appearance as private counsel and three days before the jury trial was scheduled to begin. Becker was the second attorney Campbell retained for this case, and Campbell had the benefit of counsel throughout the pendency of the case. Becker and Campbell had adequate time to prepare. Continuances to hire a new attorney shortly before trial are disfavored because they cause substantial loss of time for jurors, lawyers, and the court. Lewis v. State, 730 N.E.2d 686, 689 (Ind. 2000). The trial court properly exercised its discretion in denying Campbell's motion to continue. See Schmid v. State, 804 N.E.2d 174, 178 (Ind. Ct. App. 2004) (finding the trial court properly exercised its

discretion in denying a motion to continue that was requested seventeen months after the case had commenced and just over a month before the trial was scheduled to begin) trans. denied.

Campbell also argues the trial court's denial of a continuance infringes on his Sixth Amendment right to obtain counsel of his choosing. Campbell stated, "I don't feel like he is working for me. He just [told] me to rot in here and to go to hell. I would like my bond receipts back and I would like to hire another attorney." Appellant's App. p. 74. The Sixth Amendment guarantees a criminal defendant's right to have the assistance of counsel for his or her defense. Schmid, 804 N.E.2d at 178. A corollary of this right is the defendant's right to choose counsel when he or she is financially able to do so. Id. However, the right to counsel of choice is not absolute; rather, it is well settled that the right to counsel of choice must be exercised at the appropriate stage of the proceeding. Id.

When reviewing an allegation of error in denying a continuance coupled with a contention that the defendant had a right to counsel of his choosing, a trial court, in the exercise of its discretion, may refuse to allow an accused to replace counsel during or immediately before trial because such a substitution would require the court to grant a continuance. Lewis, 730 N.E.2d 690. Here, Campbell contends, "I haven't talked to my lawyer until today. I don't know what's going on," and "I've been here six months and this is the first time you all come to me to [sic] talking about some trial?" Appellant's App. p. 77. Campbell's contentions were made three days before trial, and in denying Campbell's motion to continue, the trial court properly acted within its discretion. See

Beadin v. State, 533 N.E.2d 144 (Ind. 1989) (denying a continuance two days before trial). Although the trial court denied Campbell's motion to continue the trial, the court presented the options of (1) going to trial with Becker; (2) going to trial without Becker; or (3) going to trial in Campbell's absence. Tr. p. 3. Campbell chose to go to trial with Becker representing him. Thus, Campbell's claim that he was improperly denied his right to proceed with counsel of his choice is unsupported by the facts. We conclude Campbell's right to have counsel of his choosing assist in his defense was not impaired by the trial court's denial of his motion to continue.

Conclusion

We conclude the trial court did not err in denying Campbell's motion to continue the trial. We affirm.

Affirmed.

ROBB, J., concurs.

SULLIVAN, J., concurs in result.